

/3/ Sources of European Union Law - Overview

Course: *Law of the European Union*

Filip Křepelka, *Masarykova univerzita*
(krepelka@law.muni.cz)

EU law – hybrid law

- The European Communities and the European Union were and is hybrid of international organisation and federation.
- Unsurprisingly, their law is also hybrid of international and national laws.
- Experts often speak and write about the third type of law: supranational law.
- Nevertheless, this approach undermines our attention to similarities and differences with and from both national and international laws.

National (state) laws

- National laws are addressed to individuals and legal entities under state jurisdiction.
- Principal source of law is act - i. e. written document adopted by legislator.
- Names for these acts differ, thus indicating legislators and legislative process.
- There are statutes (laws), codes, decrees, regulations etc (if translated to English).

Features of national law

- Law-maker creates law as binding for all.
- Population itself does not participated at all (monarchies, dictatorships) or participated only indirectly with their representatives in democracies.
- Law-making by entire population (referenda, plebiscites) is exceptional and partial (approval).
- There are legislative authorities: monarch, parliament, ministries, councils of local government.
- Individuals opposing the legislation are expected to respect it and is sanctioned if fails to do it.

Hierarchy of national law

- There is hierarchy in national laws.
- Frequently depicted as pyramid: constitution, ordinary statutes, decrees and by-laws of regional and local governments.
- In federations, primacy of federal law, if adopted within federal competences, shall be taken into consideration. Both federal and state laws are hierarchical.

Enforcement of national laws.

- National laws are enforced by state authorities.
- Coercion of individuals if they do not comply voluntarily is frequent (seizure of property, police coercion, imprisonment etc.)
- Authorities are established for enforcement of national laws (administrative agencies, courts)
- Armed forces are involved, if necessary (army, police, prisons).
- There is no state without!

Sources of international law

- International law is addressed to countries (states) and international organizations.
- Principal sources are international treaties (conventions, agreements).
- International treaties are binding only for contracting parties (countries which have finally agreed to them, frequently by ratification).
- Contemporary international law is thus a plethora of bilateral, plurilateral and multilateral treaties. There is no universal international law.
- An additional source is international custom.

Enforcement of international law

- There is no global government in contemporary world.
- Therefore, it is enforced by pressure of countries and – in the most serious cases – by international community.
- Compliance with international law is based also on **reciprocity**. Mutual compliance is preferred if compared with absence of rules.

Structure of European Union Law

- Primary law: treaties agreed and ratified by member states (and candidate states in cases of treaties of accession).
- Secondary law: legislative acts of institutions of the European Community and European Union.
- There is also some subsidiary law (other treaties among member states) and external law (treaties with the third countries)
- fundamental rights relevant to practice of the European Communities and Union.

Primary law

- Primary law of the European Community were and of the European Union are an offspring of international law.
- There are several founding treaties, treaties – amendments and treaties of accession as special type of treaties amending older ones.
- All these treaties are to be adopted by the states involved in integration process (founding, member, and candidate states).

Approval and Ratification

- Primary law, i. e. international treaties are concluded (adopted) by the highest state executive officials, i. e. by heads of state or heads of government and by ministers, ministers at intergovernmental conferences („summits“).
- Nevertheless, these treaties need to be ratified. They shall be approved as international obligation of particular states according to its own constitutional provisions or practice.
- Ratifications – made usually by head of state with assent of parliaments or - in case of primary law of the EC / EU – referenda.

Principal treaties until Lisbon

- **Treaty on establishment of the European Community (TEC)**, adopted in 1957 in Rome („Treaty of Rome“). It established principles, institutions, secondary law, procedures, economic freedoms and specific economic policies (1st pillar).
- **Treaty on the European Union (TEU)** , adopted in 1992 in Maastricht („Treaty of Maastricht“). It provided rules for non-economic integration, common foreign and security policy, justice and internal matters (2nd and 3rd pillars).
- Both treaties were amended with subsequent treaties (last are Treaty of Amsterdam and Treaty of Nice) and treaties of accession.

„European Constitution“ failed

- **The Treaty establishing a Constitution for Europe** was adopted in 2004.
- It was expected to replace existing primary law.
- Nevertheless, seven member states failed to ratify it due to negative results of referenda (two countries: F, NL) or due to lack of political will.
- It was no real constitution, but „Treaty establishing a Constitution for Europe“ (Constitutional Treaty). Nevertheless, its name was expected to resemble national constitutions.

Significant changes with the Lisbon Treaty: TEU and TFEU

- The Treaty of Lisbon was adopted in 2007. It entered into force in December 2009 after successful ratification by all 27 member states.
- The Treaty reorganised existing primary law.
- **Treaty on the European Union (TEU)** is basic treaty.
- Treaty establishing the European Community shall be transformed into **Treaty on Functioning of the European Union** (in accordance with of the European Union and the European Community) provides details.
- Understanding requires parallel reading of both treaties: fundamentals are in TEU and details in TFEU.
- **Charter of fundamental rights of the EU** is proclaimed to primary law by the Lisbon Treaty.

Regulations

- Regulation are addressed to everybody – i. e. all natural persons and legal entities - under jurisdiction of the member states.
- Direct effect and priority are expected by wording of TFEU (article 288-1).
- Regulations are used if single Europe-wide rules are needed and this unity shall be apparent to individuals and entities regulated of them.
- In many cases, regulations shall be accompanied with procedures, institutions and sanctions set by national law of member states.
- Attempt to rename them to „European laws“ failed with failure of the „European Constitution“

Directives

- The member states are required to introduce or maintain standards set with directives in their national law, see article 288-2 TFEU.
- The process is labelled as transposition or implementation.
- New acts, amendments of existing laws, decrees, by-laws can be adopted. Certainly, it must be law.
- However, extralegal transposition is insufficient.
- Attempt to rename them „European framework laws“.

Decisions

- Decisions are mentioned as source of law in article 288(3)TFEU.
- However, there are also various decisions in individual cases with no general binding force.
- Some decisions, on the other hand, are binding for states in general. They often provide legislative standards similar to these set by regulations.

Recommendations and opinions

- Recommendations and opinions are mentioned in list of legal acts article 288-4,5 TFEU.
- Recommendations are not legally binding. They can enjoy, nevertheless, indirect legal effects and political importance (soft law).
- Now, open method of coordination as method for voluntary approximation of national laws and practices is encouraged.
- Opinions on various issues are also not binding.

Former acts of the second and the third pillars of EU

- There were other documents established by EU Treaty“ joint positions, joint actions and joint strategies for common foreign and security policy, and decisions and framework decisions for cooperation in criminal affairs.
- All the acts were binding for member states. Their effect on individuals can be indirect only.
- The Lisbon Treaty expects use of regulations, directives and decisions. There shall be specific decisions for foreign and security policy.

Making secondary law

Legislative activity is thus creation of various legal documents of secondary law (regulations, directives, decisions).

- Legislative institutions are the European Parliament (weaker position), the Council (stronger position), the European Commission (monopoly on proposals), the advisory committees.

Legislative procedures in the past (until Lisbon)

- TFEU provides for several legislative procedures. They are modified by special legislative provisions on particular competences.
- Four principal procedures existed: codecision, cooperation and consultation (involving the European Parliament) and the Council deciding alone
- EC Treaty provided for more than 30 different modifications. EU Treaty provided for several law-making procedures for the 2nd and 3rd pillars.

Ordinary legislative procedure

- The European Commission – proposal
- Both legislative institutions approve jointly
- The European Parliament – can veto
- The Council – decides with qualified majority.
- Steps are described in TFEU: 1st reading, 2nd reading and 3rd reading are expected if necessary. Compromise can be negotiated with a conciliation committee.

Use of ordinary legislative procedure

- Ordinary legislative procedure has evolved from codecision procedure.
- Amendments of TEC have introduced codecision into new and new agendas.
- Lisbon Treaty repabitized codecision to ordinary legislative procedure and introduced it for most agendas.

Special legislative procedures

- Special legislative procedures cover several sensitive agendas.
- There are several special legislative procedures.
- Role of the European Parliament is limited. Its veto can be overruled, it must be consulted.
- The Council must mostly decide unanimously.
- Exceptionally, the European Parliament decides and the Council is consulted.

The Council / the Commission alone

- Several pieces of legislation (regulations, directives, decisions) are adopted by the Council alone. The European Parliament is not involved.
- Lisbon Treaty clarifies rules for adoption of delegated non-legislative acts and implementing rules by the Commission or by the Council.

Accesoric law (additional international treaties)

- There were several international treaties concluded by member states (sometimes not by all of them, sometimes also by non-member states) for enforced integration or cooperation.
- Several these treaties have been subsequently integrated in the European Communities and the European Union („Schengen law“ etc.).

External law (international treaties with non-member states)

- There are numerous treaties concluded by the European Union (former European Communities) or/and by their members states with non-member states or other international organisations.
- The Court of Justice decided for limited direct effect of these treaties in European Community and Union law and thus in law of member states.

Fundamental rights and freedoms

- The European Communities and the European Union gradually accepted European Convention of Human Rights of the Council of Europe as understood by its European Court of Human Rights and global international standards.
- Integration into European system for their protection is discussed for decades, enabled with the Lisbon Treaty, agreed in the Council of Europe, but effectively stopped by the Court of Justice.
- Charter of Fundamental Rights and Freedoms was adopted together with Treaty of Nice(1999).
- „European Constitution“ incorporated the Charter. Lisbon Treaty declares the Charter applicable similarly as primary law

Language regime of the European Union law

- Primary law is written in authentic in 24 language versions.
- Similar number of official languages (with some exceptions) is used for formulation and publication of regulations, directives and other act of the European Community and Union.
- Translation is, however, sometimes imperfect. Anyway, there is no ideal translation.
- Mistakes and errors cannot be excluded: corrigenda are sometimes necessary.
- The Court of Justice calls for comparison of language versions.

Publication of the EU law

Official Journal of the European Union is official source. Publication in it is condition of validity (electronic since 2013).

Judgements of the Court of Justice are officially published in European Court Reports.

EURLex is Worldwide accessible Internet legal service of the European Union and of the European Community

- See <http://eur-lex.europa.eu/homepage.html?locale=en>
- CELEX numbers for identification of documents are used.